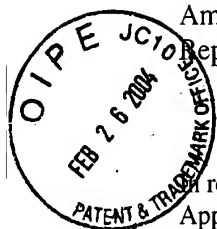


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Application No. 10/031,477
Amendment dated February 23, 2004
Reply to Office Action dated December 23, 2003



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of
Applicant: Edmond D. Roussel et al.
Appl. No.: 10/031,477
Filed: June 4, 2002
Title: USE OF PROPIONIC BACTERIA
FOR PRODUCING PROPIONIC
ACID AND/OR PROPIONATES
IN THE COLON
TC/A.U.: 1651
Examiner: Irene Marx
Docket No.: HER0050
Customer No.: 00832

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 23, 2004.

Anthony Niewyk, Reg. No. 24,871

Name of Registered Representative

Signature

February 23, 2004

Date

ELECTION

Mail Stop Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Requirement for Restriction dated December 23, 2003, which had a period for response set to expire on January 23, 2004, which period has been extended to expire on February 23, 2004 by the enclosed Petition For Extension Of Time, Applicants hereby provisionally elect, with traverse, the claims of Group I, namely, claims 1 and 4, for prosecution in the instant application.

Applicants traverse the Restriction Requirement for the following reasons. The Examiner has stated that Group I pertains to a method of making and that Group II, namely claim 2, is drawn to a method of favoring the assimilation of minerals in the colon. That is not correct. Claim 2 calls for the use as claimed in claim 1, i.e., the method of making composition in order to obtain a **composition capable** of favoring the assimilation of minerals in the colon. In other words, claim 2 is also a method claim. Applicants refer the Examiner to claim 1 which also calls for the use of propionic bacteria in order to obtain a food composition. Furthermore, all of the limitations of claim 1 are also part of claim 2. Claim 2 only adds the additional step calling for the assimilation of the principal minerals.

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Group III consists of a single claim 3 which the Examiner states is drawn to a method of reducing the development of pathogens in the colon. Claim 3 includes all of the limitations of claim 1 but adds the further step of the composition is **capable** of reducing the development of pathogens in the colon. Again, Applicants submit that claim 3 should not be considered a separate group of claims.

Group IV consists of claims 5 and 6, both of which call for all of the limitations of claim 1, but further call for the resulting composition to have certain properties.

Group V consists of claims 7 and 8, which again call for all of the limitations of claim 1, but further call for an additional step of adding the propionic bacteria in a particular way. Applicants submit that those claims are also method claims.

Finally, Group VI contains a single claim which contains all of the method steps of claim 1 but which characterize the composition of containing lactic bacteria, etc.

The Examiner has stated that there is no common inventive concept shared among Groups I-VI since a technical relationship is lacking among the claimed inventions involved in one or more special technical features because the process of making cultures of propionic acid bacteria, as well as the claimed methods of use and compositions, are known in the art, citing two references.

Thus, the Examiner's contention does not appear to be that the Groups consist of different inventions but rather that the prior art shows the inventions called for in claim 1. Applicants respectfully disagree. Claim 1 calls for a method of obtaining a food composition and that method is called for in each of the claims at issue in all of the Groups of the claims. Applicants submit that the desired method of claim 1 comprises a technical relationship among the various claims and that the claims are therefore appropriate and that Applicants are entitled to examination of all of those claims.

The Examiner gave two examples of the prior art which allegedly disclose the invention of claim 1, namely, WP97/19689, and in particular pages 3-6 thereof. Applicants submit that no such reference is in existence. Applicants have searched and can locate no reference WP97/19689. Is it possible that the Examiner meant to cite WO97/19689? That publication, as well as the cited French publication FR 2 741 509, are both in French, and the Examiner has not submitted translations to the undersigned. Applicants are therefore unable to comment on those references.

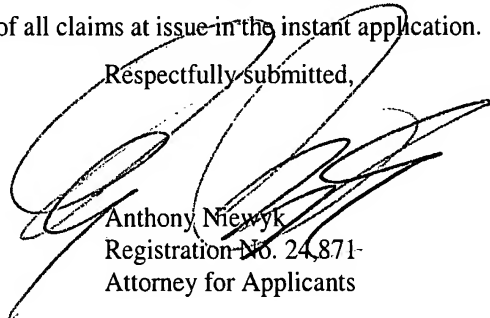
Applicants also submit that under 37 C.F.R. 1.475 a national stage application may contain claims directed to a product, a process especially adapted for the manufacture of the product, a process of use of the product, and an apparatus specifically designed for carrying out the process. Applicants respectfully

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submit that all of the claims at issue pertain to one of the above categories. Applicants therefore respectfully submit that the Requirement for Restriction is improper.

For all of the above reasons, Applicants respectfully traverse the Election/Restriction Requirement and request examination of all claims at issue in the instant application.

Respectfully submitted,



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AN/mh

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